

Notice of Allowability

Application No.

09/865,141

Examiner

Gentle E. Winter

Applicant(s)

TANHEHCO, BENITO L.

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/22/04.
2. ☒ The allowed claim(s) is/are 8, 9-11, 23, 25, 31, 32, 37-40 and 42 (Renumbered as 1-13).
3. ☒ The drawings filed on 24 May 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Claim Rejections - 35 USC § 102--Withdrawn

1. Claims 1-7, 9, 10, 14, 18, 19, 21-30, 32, 33 were rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6,380,130 to Meyer et al. (Meyer). Additionally, claims 1, 3, 5, 6, 21, 23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,939,086 to Levy.

Claim Rejections - 35 USC § 103--Withdrawn

2. Claims 4, 9, 11, 15 20, 32, 34-35, 37, 38, and 39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer, as set forth above, and Benson.

3. Applicant has taken the previously indicated as allowable claims 8, 31, 36 and 40, which were objected to as being dependent upon a rejected base claim and incorporated the limitations of the base claims into the objected to claims. Thus, the claims are now in position for allowance.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

5. Authorization for this examiner's amendment was given in a telephone interview with Paul E. Hodges on June 14, 2004.

6. The application has been amended as follows:
7. Claim 41 is cancelled without prejudice.

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

1. Claims 8, 31, 36 and 40 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, applicant has rewritten the claims in independent form. Claims 8 and 31 disclose a three absorbent gelling system with a tri-level density gradient system and specific percentages of the absorbents. The prior art of record discloses all of the features (e.g. Mayer with three level gelling absorbent system), however the aggregated elements are believed to be novel and based on the level of specificity in the 5/4/1 of the absorbents the claim is believed to be non-obvious over the prior art of record.
2. Claims 36 and 40 disclose solidifier compartments that have different rates of dissolution. Where it is understood that there is some physical difference in the compartment material. The prior art of record is contextually silent with respect to this limitation. The above statement uses the word contextually in the sense of liquid gelling agents. The prior art is replete with teachings of dissolvable layers used to facilitate a time release of a material. However, the references do not appear to contemplate the claimed combination. The usual application of such dissolvable layers in the context of the controlled release of medicaments.


3. With respect to claim 24, the same has been modified to unambiguously indicate the steps of mixing three gelling absorbents and introducing at least a portion of the mixture with the other existing claim limitations thereby distinguishing claim 23 from which 24 depended.
4. New claim 42 is substantively cumulative with claim 24, and is allowable of the reasons discussed above.
5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday-Friday 7:00-3:30.
7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Gentle E. Winter
Examiner
Art Unit 1746

June 14, 2004


RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700